



## INTERIOR BOARD OF INDIAN APPEALS

Elizabeth Conley v. Pacific Regional Director, Bureau of Indian Affairs

36 IBIA 289 (08/24/2001)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

ELIZABETH CONLEY,  
Appellant

v.

PACIFIC REGIONAL DIRECTOR,  
BUREAU OF INDIAN AFFAIRS,  
Appellee

: Order Docketing and Dismissing Appeal  
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:  
:  
: Docket No. IBIA 01-164-A  
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:  
: August 24, 2001

On August 20, 2001, the Board of Indian Appeals (Board) received a notice of appeal from Elizabeth Conley (Appellant) through California Indian Legal Services (CILS). Appellant seeks review of a July 9, 2001, letter from the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning compensation to Appellant's attorney, CILS, for services rendered in a custody proceeding under the Indian Child Welfare Act. For the reasons discussed below, the Board docketed this appeal, but dismisses it without prejudice as premature.

Appellant objects that, in approving the payment of her attorney fees, the Regional Director also made a determination under 25 C.F.R. § 23.13(d)(1) to limit the total amount of compensation which would be paid to \$1,000. The regulation provides:

(d) When determining attorney fees and expenses, the court shall:

(1) Determine the amount of payment due appointed counsel by the same procedures and criteria it uses in determining the fees and expenses to be paid appointed counsel in state juvenile delinquency proceedings \* \* \*.

Appellant argues: (1) 25 C.F.R. § 23.13(d)(1) gives authority to determine the amount of compensation to the court, not to BIA; and (2) the Regional Director was arbitrary and capricious and abused his discretion by prematurely deciding that the custody proceeding at issue here was a "Class B simple case." Appellant states that the case is still pending in state court and neither she nor her counsel has as yet submitted a voucher for payment of the approved attorney fees and expenses.

The Board declines at this time to comment on the substance of the Regional Director's July 9, 2001, letter. It notes that, although the Regional Director has expressed his intention to limit payment of attorney fees in this matter, the underlying custody case is still pending in state court and payment has not been requested. Appellant is now aware of the Regional Director's

position and can present her arguments against that position to the Regional Director with her payment voucher. The Regional Director remains free to change his position based on the arguments Appellant raises.

Under these circumstances, the Board concludes that this appeal is premature. Appellant should present her arguments to the Regional Director and allow him the opportunity to change or explain his position.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed, but dismissed without prejudice as premature. 1/

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Anita Vogt  
Administrative Judge

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1/ The Board feels constrained to comment on the appeal information which the Regional Director provided to Appellant in his July 9, 2001, letter. The Regional Director stated: "In the event you disagree with this decision, you may file an appeal in this office at the address listed on the letterhead within 30 days of receipt of this decision (25 CFR 2.9). A copy of your appeal must also be sent to the Interior Board of Indian Appeals in accordance with 25 CFR 2.4(e); 43 CFR 4.310 through 4.318 and 43 CFR 4.330 through 4.340."

This information is incorrect.

There has been no change in the Departmental regulations which provide that appeals to the Board are governed by 43 C.F.R. Part 4, Subpart D, not by 25 C.F.R. Part 2. See in particular, 25 C.F.R. § 2.4(e). Under 43 C.F.R. § 4.332(a), a notice of appeal from a Regional Director's decision is to be filed with the Board, not with the BIA deciding official. In addition, although it is not at issue here, the Regional Director failed to inform Appellant of her responsibility to serve a copy of her notice of appeal on the Assistant Secretary - Indian Affairs and other interested parties.

Appellant followed the instructions given in the Regional Director's decision and filed a copy of her notice of appeal with the Board. The Board has treated that copy as an original filing because of the incorrect appeal information given to Appellant.

As the Board noted in Adams v. Rocky Mountain Regional Director, 36 IBIA 286, 288 n.2 (2001), in order to avoid compromising the appeal rights of any party, the Regional Director should ensure that he includes BIA's standard appeal instructions in each of his decisions. If the Regional Director fails to give appeal instructions which comply with 25 C.F.R. § 2.7(c), the time for filing appeals is tolled until proper instructions are given.